
SENATE BILL No. 484

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-14; IC 31-17-8.

Synopsis: Protective parent reform act. Provides that: (1) a court may not restrict a parent's custody or parenting time with a child based solely on the parent's actions concerning the parent's reasonable belief that the parent's child is the victim of child abuse or neglect or domestic or family violence; (2) a parent may not be deprived of custody based on a mental health professional's opinion that the parent may flee with the child; and (3) a guardian ad litem, court appointed special advocate, or counsel for a child may advocate only for the wishes of the child. Prohibits: (1) a guardian ad litem, court appointed special advocate, or counsel for a child from being considered a quasi-judicial officer or granted a fact finding role; (2) a court from allowing certain expert evidence; (3) certain reports and recommendations to be filed with the court; (4) a court from appointing certain mental health professionals; and (5) a court from engaging in ex parte communications with certain individuals. Requires a court to consider evidence of child abuse or neglect or domestic or family violence in determining custody or parenting time. Requires a court to: (1) provide evaluations and reports to a parent; and (2) allow a parent the opportunity to depose and cross-examine a mental health profession or custody evaluator.

Effective: July 1, 2007.

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January 18, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 484

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-14, AS AMENDED BY P.L.1-2006,
2 SECTION 496, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) "Child abuse or neglect", for
4 purposes of **IC 31-17-8**, IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and
5 IC 31-39-8-4, refers to a child who is alleged to be a child in need of
6 services as described in IC 31-34-1-1 through IC 31-34-1-5.

7 (b) The term does not refer to a child who is alleged to be a child in
8 need of services if the child is alleged to be a victim of a sexual offense
9 under IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3
10 involves the fondling or touching of the buttocks, genitals, or female
11 breasts.

12 SECTION 2. IC 31-17-8 IS ADDED TO THE INDIANA CODE AS
13 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2007]:

15 **Chapter 8. Protective Parent Reform**

16 **Sec. 1. A court may not deprive or restrict a parent's custody or**
17 **parenting time with the child based solely on one (1) or more**

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following actions by the parent:

(1) The parent makes a good faith allegation based on a reasonable belief supported by facts that the parent's child is the victim of child abuse or neglect or domestic or family violence.

(2) The parent acts lawfully and in good faith in response to the reasonable belief described under subdivision (1) to protect the child or seek treatment for the child.

Sec. 2. (a) A court shall consider admissible evidence of child abuse or neglect or domestic or family violence in a proceeding for custody of or parenting time with a child.

(b) If a parent makes an allegation that a child is the victim of abuse or neglect or domestic or family violence by another parent, a court:

(1) shall consider evidence of child abuse or neglect or domestic or family violence in determining custody of and parenting time with the child in accordance with the best interests of the child; and

(2) may not award custody of a child to a parent who presents a substantial risk of harm to the child.

Sec. 3. A court may not engage in ex parte communications with the following individuals who participate in a proceeding to determine custody of or parenting time with a child:

(1) A guardian ad litem or court appointed special advocate for the child.

(2) Counsel for the child.

(3) A custody evaluator.

(4) A mental health professional.

(5) A conciliator.

(6) A mediator.

(7) A screener.

(8) Another professional participating in the proceeding.

Sec. 4. (a) A guardian ad litem, court appointed special advocate, or counsel for a child:

(1) may:

(A) advocate only for the wishes of the child; and

(B) participate in the proceeding;

by presenting evidence and arguments in the same manner as counsel for a parent; and

(2) may not:

(A) substitute the judgment of the guardian ad litem, court appointed special advocate, or counsel for the wishes of the

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child; or

(B) offer any evidence that would be excluded under applicable law if offered by any other party.

(b) A guardian ad litem, court appointed special advocate, or counsel for a child may not be:

(1) considered a quasi-judicial officer; or

(2) granted any fact finding role.

(c) This section does not require the appointment of a guardian ad litem, court appointed special advocate, or counsel for a child in a proceeding for custody of or parenting time with a child.

Sec. 5. A court shall:

(1) provide a parent of a child full and timely access to all custody and mental health evaluations and reports that the court may consider in the proceeding for custody of or parenting time with a child, including all underlying data of the custody and mental health evaluations and reports; and

(2) afford a child's parent the opportunity to:

(A) depose before trial; and

(B) cross-examine;

each mental health professional or custody evaluator who testifies in the proceeding at trial.

Sec. 6. In a proceeding for child custody of or parenting time with a child, a court may not allow expert opinion or expert evidence that attempts to:

(1) discredit a parent's motivation for asserting that the parent's child is the victim of child abuse or neglect or domestic or family violence by another parent; or

(2) discredit a child's report that the child is a victim of child abuse or neglect or domestic or family violence;

unless the expert opinion or expert evidence is based on concepts and theories that are generally accepted by the scientific community and supported by credible and admissible evidence of facts that are established independently from the expert opinion or expert evidence.

Sec. 7. A parent of a child may not be deprived of:

(1) custody of; or

(2) parenting time with;

the parent's child based on the opinion of a mental health professional that the parent is at risk of unlawfully fleeing with the child, unless credible and admissible evidence independent of the mental health professional's opinion is presented to establish that the parent is at risk of unlawfully fleeing with the child.

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2 **Sec. 8. (a) A recommendation or report of a court sponsored:**

3 **(1) conciliation;**

4 **(2) mediation;**

5 **(3) intake screening; or**

6 **(4) parenting education program;**

7 **may not be filed with a court unless all parties to a proceeding for**
8 **custody of or parenting time with a child agree to a**
9 **recommendation or report.**

10 **(b) A party to a proceeding may contest the filing of a**
11 **recommendation or report described under subsection (a).**

12 **Sec. 9. If child abuse or neglect or domestic or family violence**
13 **is an issue in a proceeding for custody or parenting time with a**
14 **child, a court may not appoint a mental health professional or**
15 **custody evaluator unless the mental health professional or custody**
16 **evaluator has training and experience in the type of child abuse or**
17 **neglect or domestic or family violence that is relevant to the**
18 **specific allegations in the proceeding.**

19 **Sec. 10. A parent may not violate a valid protective order issued**
20 **against the parent even if the parent is awarded custody of or**
21 **parenting time with a child.**

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